

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM BRANDON CUMMINGS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 09-20J
	)	Judge Gibson
	)	Magistrate Judge Bissoon
CO BUTLER, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

William Brandon Cummings's prisoner civil rights complaint was received by the Clerk of Court on January 30, 2009, and the case was referred to United States Magistrate Judge Cathy Bissoon for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on May 28, 2010, recommended that Defendants' Motion for Summary Judgment be granted. Plaintiff timely filed objections (Doc. 49). Plaintiff argues, *inter alia*, that administrative remedies were unavailable to him and, accordingly, that the Magistrate Judge's finding that he failed to exhaust administrative remedies is incorrect. Plaintiff is wrong. Plaintiff signed his Complaint **the same day** that the alleged assault occurred. Even if, as Plaintiff alleges, he was denied a grievance form on January 26, 2009, this does not explain why he did not attempt to file it at a later date since he has 14 days to file a grievance. Much more is required to establish that Plaintiff's right to file a grievance was impeded, and he cannot simply choose to ignore the exhaustion requirement.

After de novo review of the pleadings and documents in the case, together with the Report and Recommendation and the objections thereto, the following order is entered:

AND NOW, this 16<sup>th</sup> day of June, 2010,

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment (Doc. 44) is GRANTED.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Bissoon (Doc. 48), dated May 28, 2010, is adopted as the opinion of the court.

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

Kim R. Gibson  
United States District Court Judge

cc:

**WILLIAM BRANDON CUMMINGS**  
GX-8328  
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